DOCUMENT RESUME

ED 217 114 UD 022 295

AUTHOR Carter, George E.
TITLE Affirmative Action in Higher Education: Another Political Myth for Ethnic Americans.
PUB DATE Nov 81
NOTE 17p.; Paper presented at the Annual Regional Southwest Pacific Conference of the National Association of Interdisciplinary Ethnic Studies (4th, Bakersfield, CA, November 20-21, 1981) and the Annual Conference on Ethnic Minority Studies of the National Association of Interdisciplinary Ethnic Studies (10th, Santa Clara, CA, April 14-17, 1982).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Affirmative Action; Blacks; Employed Women; *Equal Opportunities (Jobs); *Federal Legislation; Higher Education; Minority Groups; *Public Policy; Quotas; *Social Discrimination; *Universities

ABSTRACT

Executive orders concerning nondiscrimination in employment have been issued by past administrations from Roosevelt to Kennedy. It was President Johnson who first used the term "affirmative action" in advocating employment regardless of race, creed, color, or national origin and who instituted requirements for organizations to develop affirmative action plans with numerical goals and timetables. Congressional legislation provided further for equal employment opportunities and for court litigation to enforce the law. These provisions were applied to educational institutions in 1971, when women earned less than men, minorities earned less than whites, and women and minorities comprised a disproportionately small percentage of the academic profession. Ten years later, the same conditions prevail, suggesting that affirmative action in the academic world has been ineffective. Furthermore, the affirmative action controvesy has been reversed, with the majority claiming that ethnic minorities receive preferential treatment and that whites suffer reverse discrimination. Discussions of affirmative action based on the false issues of quotas and reverse discrimination must be refocused. Furthermore, lack of support from the Reagan administration and bureaucratic failure in enforcing affirmative action emphasize the need for commitment and enforcement at local and institutional levels. (MJL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED217114

Affirmative Action in Higher Education: Another Political Myth for Ethnic Americans

by George E. Carter

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

George E. Carter

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

UD 022 295

AFFIRMATIVE ACTION IN HIGHER EDUCATION: ANOTHER POLITICAL MYTH FOR ETHNIC AMERICANS

by George E. Carter

a paper presented at the 4th Annual NAIES Regional Southwest Pacific Conference November 20-21, 1981 Bakersfield, CA

and

the 10th Annual NAIES Conference on Ethnic Minority Studies at the University of Santa Clara, Santa Clara, CA, April 14-17, 1982

No one is sure who coined the expression "affirmative action." The first official utterance is said to have been President Lyndon B. Johnson in 1965 when Executive Order 11246 was issued. Section 202 of the order indicated that all government contracting agencies would be requested to agree to the following provision:

> The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.[1]

Section 202 was a simple statement of non-discrimination. Nothing about ratios, quotas, population balance, reverse discrimination, preferential treatment; not even a word about women, or the handicapped, and nothing about special admissions programs, or special hiring programs. Yet, today these two words have become code terms for the entire thrust of equal opportunity. In 1979, John C. Livingston titled his provocative book on affirmative action Fair Game? Inequality and Affirmative Action, and concluded "... there will never be genuinely equal opportunity, for the position of minorities in America is inherently and unconscionably unequal."[2] So why all the fuss? Why have we come

so far, for so little, if we have an inherently unequal situation to start with? Has the liberal world really come apart at the seams? Is equality of opportunity only an ideal that we strive to somehow achieve? The historian Nathan Huggins stated: "If you give a course on affirmative action, the people that come into the course and the ways its discussed are going to be limited. Suppose instead you give a course on the question of fairness, which is, at bottom, what affirmative action is about. Then you are engaging your audience in the broader ethical and juris prudential questions of fairness, while focusing on affirmative action. You become more inclusive than exclusive."[3] Perhaps a change in the language will bring a change in results.

In point of fact it was not Lyndon Johnson that set the stage or the promotion of non-discrimination in employment practices. The first related executive order came in 1941 when A. Philip Randolph and other Black leaders threatened to conduct a march on Washington in protest of discrimination by the Department of Defense and its contractors. Franklin D. Roosevelt, in Executive Order 8802, stated:

> All contracting agencies of the Government of the United States shall include in all defense contracts hereafter negotiated by them a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin.[4]

In 1943, 8802 was amended by E.O. 9346 which created the Committee on Fair Employment Practice. This committee was to receive and investigate complaints of discrimination forbidden by the order. The F.E.P., did hold hearings and promoted the utilization of Black employees but "....its lack of statutory authority prevented it from securing compliance with its orders when discriminating employers or unions balked..."[5] The F.E.P. came to ar abrupt end in 1945 when Congress denied funds to the committee.

Presidents Truman and Eisenhower formed similar committees that had very limited jurisdiction. Their activities centered on persuasion and focusing publicity on the problem of discrim-

ination. In 1961, President Kennedy issued Executive Order 10925 creating the President's Committee on Equal Employment Opportunity, headed by then Vice President Johnson. This was the first time sanctions and penalities for non compliance were spelled out with corresponding enforcement procedures. The committee could recommend to the Justice Department that criminal proceedings be brought against contractors providing false information or found in noncompliance.

In 1965 President Johnson issued Executive Order 11246 which established an Office of Federal Compliance in the Department of Labor. This order further prohibited employment discrimination in contracting agencies or organizations with contracts over $10,000. By this order, institutions receiving $50,000 or more and having fifty or more employees were required to develop written affirmative action plans containing numerical goals and time tables. The term contract was interpreted to include grants or other benefits from the federal government. In 1967, Executive Order 1375 amended the previous order to prohibit discrimination based on sex.

For the first time goals and time tables entered the picture and "written affirmative action plans" were to be developed, not by the government, but by institutions receiving $50,000 or more and having fifty or more employees. Enforcement and the promotion of policy decisions were the responsibility of the Office of Federal Contracts Compliance of the Department of Labor. In fact the responsibility for enforcement of regulations affecting education agencies and institutions was delegated to the Department of Education's Office of Civil Rights. Contractors covered by the order had to maintain records to prove compliance with regulations.[6]

In addition to the Executive Orders mentioned, the United States Congress has passed legislation in the field of non-discrimination. Title VII of the Civil Rights Act of 1964, as amended, forbade discrimination in employment on the basis of race, color, religion, national origin or sex. The (EEOC) Equal Employment Opportunity Commission administers Title VII and is

responsible for enforcement. The Equal Employment Act, 1972 gave the EEOC power to go direct to the courts to enforce the law and broadened Title VII to cover state and local governments, educational institutions, and businesses with fifteen or more employees. Title VII does not explicitly require affirmative action.[7]

There are other federal laws and amendments that relate to affirmative action. The Equal Pay Act of 1963 and Title IX of the Education Amendments of 1972, both prohibit sex discrimination. The Age Discrimination in Employment Act of 1967 prohibits discrimination against persons between forty and sixty-five in employment. Much federal legislation now includes provisions for non-discrimination and many state and local governments have enacted measures prohibiting discrimination.

With regard to higher education the key year is 1971 when the EEOC was given the power to go directly to court to enforce the law and EEOC's provisions were extended to educational institutions. Further, the goals and time tables set for colleges and universities were set in 1971. Thus, a near perfect before and after situation prevailed. The facts of the matter are easily available in massive studies done by the American Council on Education, 1968-69 and 1972-73, and the National Science Foundation and National Academy of Sciences. The academic profession prides itself, and is probably unique in the mountains of statistical data produced, giving detailed information on career factors for individuals in higher education.[8]

What was the situation in higher education that the goals and timetables of 1971 were designed to correct? There is some general consensus on the answer.

1. Blacks and other minorities earned less than whites.
2. Women as a group earned less than men.
3. Both minorities and women were a smaller percentage of the academic profession than of the general population.

Controversy errupted over the reasons for the inequities, gross racial or sex differentials, employer discrimination, different career characteristics, and on these issues there was little

consensus.[9] In 1981 there is still consensus on the three basic answers, that is, Blacks and other minorities still earn less than whites, women still earn less than men, and both groups still are a smaller percentage in academia than in the general population.[10] And still there exists a lack of consensus on why? So what has been gained?

Of all places in American society, one would assume affirmative action would work best in institutions of higher education. After all, reason, common sense, equity, rationality, and a basic sense of fairness are supposed to be the hallmarks of higher education. The facts of the matter are to the contrary. When educational institutions were brought under the coverage of Title VII the government had to build a strong defense on the need for the coverage.

> Discrimination against minorities and women in the field of education is as pervasive as discrimination in any other area of employment. In the field of higher education, the fact that Black scholars have been generally relegated to all-Black institutions or restricted to lesser academic positions when they have been permitted entry into white institutions is common knowledge. Similarly, in the area of sex discrimination, women have long been invited to participate as students in the academic process, but without the prospect of gaining employment as serious scholars.[11]

The Congressional House Committee on Education and Labor worked long and hard to convince university and college administrators they should no longer be exempt from reporting their activities to EEOC. The Committee stated "...to permit discrimination here would, more than in any other area, tend to promote misconceptions leading to future patterns of discrimination."[12] The counterpart Committee in the Senate added:

> As in the other areas of employment, statistics for educational institutions indicate that minorities and women are precluded from the most prestigious and

higher paying positions and are relegated to the more menial and lower-paying jobs.[13]

Thus, educational institutions were required to report and the resulting data were embarrassing. Women as a percentage of faculty members in four year colleges and universities in 1974-75 constituted 22% of all faculty, but only 9% at the professor level and 47.6% at the lecturer and instructor level. This concentration at the lower ranks brought accusations that there were tendencies at many institutions to keep women in non-ladder/non-tenured status.[14] The situation has changed very little. A recent report on the University of California system indicates only 7.5% of U.C.'s tenured faculty members are women. No U.C. campus has a woman Chancellor, while women hold 70% of non-faculty positions in the system. Only one woman appointee sits on the Board of Regents, and "...a steady stream of studies has found that U.C. faculty and staff women are paid less and are promoted more slowly than their male counterparts." A new national study of women and minorities in top-level administrative positions at 514 colleges and universities by the College and University Personnel Association further confirms the trends. The study compares figures for 1975-1976 with 1978-1979. For minority women administrators at private institutions only a plus one gain for new administrators was achieved in the three year period.[15]

While women and ethnic minorities are usually mentioned in the same breath in actuality the history and dynamics of the problem for minorities differs from that for women in some ways. Ethnic minorities have been more sparcely represented on college and university faculties than women. In 1972-73 minorities represented about 5% of all faculty members. Blacks were higher in the "other four year institution" category because of the inclusion of historically Black institutions. The figures can be very misleading because of who was to be counted. Universities have been known to count non-citizen African faculty as Afro-American and will do the same for non-citizen Asians from

Hong Kong or Taiwan. The figure for Blacks in 1972-73 was actually 2.9%.[16]

Ethnic minorities also suffer from being underrepresented in the supply of Ph.D.'s. Further, ethnic minorities with Ph.D.'s have been disadvantaged in the beginning of their careers by shortcomings in their preparation for graduate school, and during their career by the lack of sufficient opportunity to make important research contributions because many Blacks teach in historically Black schools where the emphasis has not been on research. There is a disproportionate number of Blacks earning doctorates in education, 60% in 1973, long considered easier than doctorates in the humanities and sciences.[17]

The question can fairly be asked: "What drastic changes have been wrought by "affirmative action" in the academic world to result in the great out pourings of words and emotions. Practically none, as far as the pay, employment, or promotions of women and minorities are concerned."[18] Colleges and universities still struggle with the concept of affirmative action. "What has changed" according to Thomas Sowell, "is that the process of academic hiring has become a bureaucratic nightmare, regardless of who ends up being hired, a University's 'affirmative action' report to the government typically weighs several pounds - and may still be rejected for not being detailed enough."[19] Traditional and conservative faculty and administrators continue to preserve in tact the famous "old boy network" approach to hiring new faculty. For the most part departments still end up hiring who they want no matter what kind of affirmative action policies or procedures are in place.

Much of the controversy over affirmative action has taken place within higher education. Further, much of the controversy has come over goals and means, not over ideals. It is the mechanisms used by the government to attain the end, equal employment opportunity, that much of the controversy centers on. Many educators dare the government to invade the sanctity of academe with accusations of discrimination, and worse yet, impose

requirements on the hiring process. The call against quotas, goals, preferential treatment has come to a head in the absurd concept of reverse discrimination. We have come full circle, now it is white middle-class Anglo-Saxons that are suffering discrimination, not Blacks, or Hispanics, who are now getting preferential treatment. The code terms have come to dominate the debate.

The irony of the situation is almost beyond belief. Affirmative action, as a governmental policy, the statistics show, has done little or nothing to advance the position of minorities and females, both pro-ponents and opponents agree on this fact. Yet somehow, in the eyes of the majority, ethnic minorities have achieved a position of preferential treatment and whites suffer reverse discrimination. Something is wrong with the logic here. Justice Stanley Mosk of the Califoria Supreme Court has prepared a state constitutional amendment "...to prohibit racial quotas and other minority preference policies by government agencies and publicly supported colleges and universities." Court decisions upholding quotas and hiring and admissions policies based on race, he declared were discriminatory against whites and demeaning to minorities.[20] The issue is clearly not dead. Nathan Glazer is convinced that we have created two new racial and ethnic classes to replace the terrible pattern of the past. "The two new classes are those groups that are entitled to statistical parity in certain key areas on the basis of race, color, and national origin, and those groups that are not."[21]

Who has gained from affirmative action, who are the continuing beneficiaries--according to Thomas Sowell, "the bureaucrats who acquired power, appropriations, and publicity from their activities." It is the bureaucrats that have stretched the law beyond any Congressional intent. "Nothing in the Civil Rights Acts or the Executive Orders authorizes quotas by any name, and both the Congressional debates and the specific language of the law forbid them."[22] The courts have not wanted to confront

administrative agencies and we now have an "administrative empire serving itself in the name of serving the disadvantaged."

The literature on affirmative action does agree on one point: "the typical arguments are confused; the real issues elusive." Further, "the reasons usually offered for supporting or opposing affirmative action programs," states John C. Livingston, "conceal more than they reveal about the assumptions underlying them."[23] What can be done? What needs to be done? Should we abolish affirmative action, or give up the ideal? Are there viable solutions to the problems posed by affirmative action? Can colleges and universities go beyond the myths?

First, the level of discussion on affirmative action needs to be elevated. We need to stop talking about quotas, preferential treatment and reverse discrimination which are all false issues. Affirmative action has not worked because it never has been implemented, and the code concepts are myths. We need to understand that affirmative action is really about equality, and justice. Livingston writes: "....without affirmative action, the struggle for racial justice will come to a dead end. Too many whites imagine that the problem has been solved, that justice has been achieved...." Affirmative action cannot be approached in a political way, as a way to buy votes or hold back social disorder. "It has to be done because it is the fair thing to do, or it cannot be done at all. Affirmative action must be understood as the only fair alternative by those who pay the cost of achieving it. It is never easy to do what is fair, where conscience and interest are at fundamental odds."[24]

Given the present political climate there would appear to be little hope for affirmative action. November, 1981, the U.S. Commission on Civil Rights issued a new report, Affirmative Action in the 1980's: Dismantling the Process of Discrimination. The report sets forth a problem-remedy approach to affirmative action and also provides guidelines for establishing an effective affirmative action plan.[25] The report clearly defends affirmative

action as a desirable national goal. On the very day this report was issued the Reagan Administration demonstrated its firm opposition to affirmative action. Bradford Reynolds, the head of the Justice Department's Civil Rights Division, stated in an interview that he was looking for a case to take to the Supreme Court so the Court could rule against giving women and minorities preference in hiring or promotion. "We would take a stand in court," Mr. Reynolds stated, "against the proposition that one should discriminate on the grounds of race or sex in order to cure discrimination."[26]

It is interesting to note that the Civil Rights Commission chairperson, Arthur S. Flemming was fired by President Reagan less than a month prior to the release of the new report. Mr. Reagan has nominated Clarence M. Pendleton, a conservative Black Republican from California to be the new head of the Commission.[27] Copies of the Commission report may become rare in a relatively short time.

With regard to higher education in particular, the visual and structural impact of affirmative action has been tremendous and in some cases overwhelming. Higher education has responded with a mass of paper, flow charts, compliance reports, and rhetoric in support of equality of opportunity. Beneath the surface, however, we know it has not been effective, the hiring of ethnic minorities and women has been very slow. For the most part institutions did formulate plans that were approved by the campus affirmative action officer. To have a plan is one thing, to implement the plan is another matter. The procedures and the record keeping, and the reporting with applicant lists and flow charts, we know does not produce results, otherwise the statistics would be more impressive. There remains an under-supply of racial minority Ph.D.'s and if recruitment, that is, student affirmative action, had been more successful, such would not be the case.

A quick review of the line position which most affirmative action officers hold reveals it is most often one with little if any power within the University and often occupied by a

younger minority staff or administrative person.[28] One even finds situations where the personnel officer of an institution will double as the affirmative action officer. We all know how well the person to be regulated can regulate themselves! In a confrontation with a senior professor department chairperson who balks, who wins? The Carnegie Commission can idealistically say that affirmative action is an institutional responsibility:

> All relevant officials, from the board of trustees on down to department chairmen, and heads of other campus units, should be fully involved in an effort that is genuinely designed to accomplish nondiscrimination and affirmative action, and is not simply designed to comply routinely with federal requirements or to respond politically to campus pressure groups.[29]

But institutional determination in this structure rests with the President's Office and with the affirmative action person reporting directly to the President. There often is a special committee that will play an advisory role in reviewing plans, goals, procedures and sometimes serving as an appeal body. All well and good, but the power position is still only the President. A mandated affirmative action committee with enforcement and punitive powers might be a much more productive alternative. The present pattern has failed. Faculty with contacts in minority institutions need to be exploited in terms of their recruitment potential. The time for going through the motions is over. Administrators need to say "no" to the old boy system and block such appointments.

Finally, the main thrust for affirmative action must be at the local or institutional level. Enforcement likewise must be at this level. Overview by EEOC and the Office of Civil Rights has not worked in higher education, otherwise the statistics would not be what they are. Reporting to these kinds of agencies serves little real purpose except to perpetuate the bureaucrats.

Commitment is needed at the working-or hiring level, in departments, units, Deans, Chancellors and Presidents. They must want to attain equality--to achieve fairness, and they also need to understand what it means.

A mono-cultural educational system in a multi-cultural society is an obvious handicap. A mono-colored faculty for an educational institution in a multi-colored society is also a handicap. "In a society where people come from a wide variety of backgrounds and where some backgrounds have been severely limited by past discrimination, the very definition of equality of opportunity is elusive."[30] Elusive or not, it must be done. "Universities are in a peculiar situation. They have the unique ability to train and manufacture the quantity and quality of products which will be their custodians in the future. If they do not rise to the occasion, these very problems will resurface for later generations."[31] Further, if current practices continue, the country, simply by government action, will be divided formally into ethnic and racial categories with differential rights. The Orwellian nightmare "all animals are equal, but some animals are more equal than others," will remain and flourish.

[1]Code of Federal Regulations, 1964-1965, p. 340.

[2]John C. Livingston, Fair Game? Inequality and Affirmative Action (San Francisco: W.H. Freeman and Co., 1979), Dustjacket.

[3]George How Colt, "Will the Huggins Approach Save Afro-American Studies" Harvard Magazine (Sept. Oct., 1981) Vol. 84 No. 1, p. 45.

[4]Code of Federal Regulations,1938-1943, p. 957.

[5]Livingston, Fair Game, pp. 174-75.

[6]Programs for Education Equity: Schools and Affirmative Action, pp. 4-5.

[7]Affirmative Action and Equal Employment, p. 5.

[8]Thomas Sowell, "Affirmative Action Reconsidered," Public Interest, Winter, 1976, no. 42. p. 53.

[9]Ibid., p. 53.

[10]Los Angeles Times, October 18, 1981 "Progress is Slow for Women at U.C."

[11]House Miscellaneous Reports on Public Bills. II, Report No. 92-238, p. 19.

[12]Ibid., p. 20.

[13]Senate Miscellaneous Reports on Public Bills. IV, Report No. 92-415, p. 12.

[14]Philip N. Henry "Affirmative Action: A Concern in Higher Education" Unpublished Paper.

[15]Los Angeles Times, October 18, 1981. "Progress is Slow for Women at U.C." The report notes in the CSUC system women account for 17.9% of tenured faculty in 1979, at the California Community Colleges, 31.4% of the tenured faculty were women in 1979, at Stanford only 8% of more than 1100 regular faculty members are

women. Nationally, women were 33.9% at the assistant professor level, 1979-80, 19.4% at associate level, and at full professor the number dropped from 10.3% in 1974-75 to 9.8% in 1979-80. "Fact File" Chronicle of Higher Education, February 3, 1982, p. 4.

[16]Henry, "Affirmative Action," p. 10 and Sowell, "Affirmative Action Reconsidered" Public Interest, p. 57.

[17]Richard A. Lester, Antibias Regulation of Universities (A report prepared for the Carnegie Commission on Higher Education) N.Y. McGraw-Hill, 1974, p. 49.

[18]Sowell, "Affirmative Action Reconsidered," Public Interest, p. 57.

[19]Ibid., p. 57.

[20]Los Angeles Times, October 22, 1981.

[21]Nathan Glazer, Affirmative Action, N.Y. Basic Books Inc., 1975, p. 197.

[22]Ibid., p. 64.

[23]Livingston, Fair Game, p. 228.

[24]Ibid., p. 231.

[25]U.S. Commission on Civil Rights, Affirmative Action in the 1980's: Dismantling the Process of Discrimination (Washington, D.C., November, 1981), pp. 43-54. The guidelines are not specifically for educational institutions but are certainly applicable in most instances.

[26]"U.S. Civil Rights Commission Defends Affirmative Action," Chronicle of Higher Education, December 16, 1981, p. 13.

[27]Ibid.

[28]National Center for Education Statistics, Education Director: Colleges and Universities, Washington, D.C., 1980. This directory lists the names and titles of administrators at

U.S. colleges and universities, including in most instances affirmative action officer or director.

[29]Carnegie Council on Policy Studies in Higher Education, Making Affirmative Action Work in Higher Education, San Francisco: Jossey-Bass, 1975, p. 69.

[30]Sowell, "Affirmative Action Reconsidered" Public Interest, p. 49.

[31]Henry, "Affirmative Action," p. 22.